

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANDREW KUZNYETSOV, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No. 9-379
)	
WEST PENN ALLEGHENY HEALTH)	
SYSTEM, INC. <i>et al.</i> ,)	
)	
Defendants.)	

AMBROSE, District Judge

MEMORANDUM ORDER OF COURT

On October 15, 2010, I ruled on Plaintiff's Motion to Involuntarily Dismiss Certain Plaintiffs for failure to prosecute under Rule 41(b). (Docket No. 322). Therein, I agreed with Defendants that certain Plaintiffs' failure to, at a minimum, answer questionnaires, which is the least onerous form of discovery, demonstrates a conscious and deliberate desire not to participate in the litigation. *Id.* Nonetheless, I provided Plaintiffs with one last chance to respond.

As a result, I ordered Plaintiffs' counsel to make earnest and diligent efforts to notify the non-responsive Plaintiffs¹ that they are required to respond to the questionnaires by October 15, 2010, or their claims may be involuntarily dismissed with prejudice for failure to participate in discovery. (Docket No. 322). On October, 16, 2010, Plaintiffs' counsel filed a response dividing the non-responsive Plaintiffs into three categories: three individuals who have been contacted and are in the process of responding; and eight individuals who they have been able

¹ The non-responsive Plaintiffs include the following individuals: Roy Copeland, Janean Cusaac, Cynthia Cutruzzula, Dorothy Davis, Kanika Demery, Janet Felsing, Erin Fromherz, Krista Gould, Krystina Gray, Dawn Holt, Soosan Jacob, Danielle Malanosky, Nancy Mancu, Melissa Morganti, Michele Null, James Paolino, Cynthia Pietrzak, Jennifer Reeger, Sherri Sevic, Gloria Sperhac, Angeline Angelo, Joann Baker, Jennifer Benson, Rickey Benson, Heather Bercosky, Amy Borgen, Irene Briseel, Marcee Buecker, Michael Cinkan, Cynthia Dismukes, Nancy Divincenzo, Tammy Domiano, Mary Margaret Everett, Terri France, Lisa Genta, Robert Mikita, and Edward Smith. (Docket No. 322).

to reach and have decided to opt out of this lawsuit; and 26 individuals they have not been able to contact. (Docket No. 335). Defendants filed a response thereto. (Docket No. 336).

With respect to the three individuals who are in the process of responding (Angeline Angelo, Soosan Jacob, and James Paolino), I find that Angeline Angelo has failed to respond to the questionnaire and must do so now or risk dismissal of her claim for failure to prosecute. (Docket No. 336). Similarly, I find that Soosan Jacob and James Paolino have failed to provide dates for depositions and, thus, have not been produced for deposition. (Docket No. 336). Soosan Jacob and James Paolino must do so now or risk dismissal of their claims for failure to prosecute.

With respect to the eight individuals² who desire to opt-out, they shall be dismissed from this action, without prejudice. To be clear, these individuals will not be permitted to rejoin this action. Rather, their rights to sue are individual and nothing in this Court's Orders shall be deemed to toll any applicable statutes of limitation.

With respect to the 26 individuals³ who have not responded, they shall be dismissed from this action, with prejudice. All reasonable efforts to contact these individuals have been exhausted. (Docket No. 335). Thus, I find these individuals have failed to prosecute their claims and shall be dismissed in accordance with Rule 41(b) of the Federal Rules of Civil Procedure.

THEREFORE, this 19th day of October, 2010, it is ordered as follows:

1. The Motion to Involuntarily Dismiss (Docket No. 255) is denied with regard to: Angeline Angelo, Soosan Jacob, and James Paolino. Angeline Angelo shall provide questionnaire responses by October 22, 2010, otherwise her claim may be involuntarily dismissed with prejudice for failure to participate in discovery.

² The eight individuals include: Janean Cusaac, Cynthia Cutruzzula, Dorothy Davis, Nancy Divincenzo, Tammy Domiano, Mary Margaret Everett, Lisa Genta, and Cynthia Pietrzak. (Docket No. 335).

³ The 26 individuals include: Roy Copeland, Demery Kanika, Janet Felsing, Erin Fromherz, Krista Gould, Krystina Gray, Dawn Holt, Danielle Malanosky, Nancy Mancu, Melissa Morganti, Michele Null, Jennifer Reeger, Sherri Sevic, Gloria Sperhac, Joann Baker, Jennifer Benson, Rickey Benson, Heather Bercosky, Amy Borgen, Irene Briseel, Marcee Buecker, Michael Cinkan, Cynthia Dismukes, Terri France, Robert Mikita, and Edward Smith. (Docket No. 335).

Soosan Jacob and James Paolino shall provide three available dates for their depositions to Defendants by October, 25, 2010. Said deposition dates shall be prior to November 5, 2010, otherwise their claims may be involuntarily dismissed with prejudice for failure to participate in discovery.

2. The Motion to Involuntarily Dismiss (Docket No. 255) is granted with regard to: Roy Copeland, Demery Kanika, Janet Felsing, Erin Fromherz, Krista Gould, Krystina Gray, Dawn Holt, Danielle Malanosky, Nancy Mancu, Melissa Morganti, Michele Null, Jennifer Reeger, Sherri Sevic, Gloria Sperhac, Joann Baker, Jennifer Benson, Rickey Benson, Heather Bercosky, Amy Borgen, Irene Briseel, Marcee Buecker, Michael Cinkan, Cynthia Dismukes, Terri France, Robert Mikita, and Edward Smith. Said individuals are dismissed with prejudice.
3. Plaintiffs' counsel is ordered to file a motion to voluntarily dismiss the following Plaintiffs, without prejudice, based on their desire to opt out: Janean Cusaac, Cynthia Cutruzzula, Dorothy Davis, Nancy Divincenzo, Tammy Domiano, Mary Margaret Everett, Lisa Genta, and Cynthia Pietrzak. The motion shall be filed on or before October 21, 2010.

BY THE COURT:

s/ Donetta W. Ambrose
Donetta W. Ambrose
United States District Judge